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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

GABRIEL CHAVEZ, MARY ENGLER-)	Case No.:
CONTRERAS, RHIANNON DOYLE, )	
SUSAN RICHARDSON, JONATHAN )	<b>COMPLAINT FOR DAMAGES,</b>
CASTANEDA, JAMES GILHEANY, )	<b>DECLARATORY AND INJUNCTIVE</b>
PHI LE, GEMA ESPINOZA-CARR, )	<b>RELIEF</b>
AVIN CURRY on behalf of themselves )	
and all other similarly situated persons, )	CLASS ACTION
	)
Plaintiffs, )	
	) [Demand for Jury Trial]
v. )	
	)
SAN FRANCISCO BAY AREA RAPID )	
TRANSIT DISTRICT, and DOES 1-100, )	
	)
Defendants. )	

**INTRODUCTION**

1. This is a complaint for employment discrimination brought as a class action by employees holding religious convictions against the SARS-CoV-2 (COVID-19) vaccine. Two hundred and four (204) employees requested medical or religious

1 exemptions from their employer, San Francisco Bay Area Rapid Transit District  
 2 (BART), from COVID-19 vaccination. One in three employees requesting medical  
 3 exemptions were granted an accommodation. Of the 179 religious objector  
 4 employees, not one received an accommodation. Exclusion of religious people from  
 5 the enjoyment of a right stands in violation of the First Amendment's religion clauses  
 6 and federal and state anti-discrimination in employment laws.

## 7 **JURISDICTION AND VENUE**

8 2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331,  
 9 as it arises under the U.S. Constitution and laws of the United States. This action  
 10 presents a federal question, pursuant to 28 U.S.C. § 1343(a)(3)-(4). The Court also has  
 11 jurisdiction under 42 U.S.C. § 2000-e5(f)(3). Venue is proper within this judicial  
 12 district and division, pursuant to 28 U.S.C. § 1391(b), because the relevant events have  
 13 occurred and are threatened to occur in this jurisdictional district and division. The  
 14 Defendant's principal place of business is in this district.

15 3. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28  
 16 U.S.C. §§ 2201-02, Federal Rules of Civil Procedure 57 and 65, and the general legal  
 17 and equitable powers of this Court, which empower this Court to grant the requested  
 18 relief.

## 19 **PARTIES**

### 20 **Plaintiffs**

21 4. Plaintiff, GABRIEL CHAVEZ, was employed by BART as a Building  
 22 Worker. CHAVEZ has sincerely held religious beliefs that prevent him from  
 23 receiving the COVID-19 vaccine without violating his faith. CHAVEZ submitted a  
 24 written request for a religious accommodation under Title VII and the California Fair  
 25 Employment and Housing Act (FEHA). CHAVEZ utilized BART'S form entitled  
 26 *Employee Request for Religious Exemption (COVID-19 Vaccination)*. A true and correct  
 27 copy of his request, along with the combined requests of the other Plaintiffs,  
 28

1 accompanies this Complaint, is incorporated in full, and is marked as Exhibit 1. His  
2 beliefs are sincerely held. BART granted the exemption, but in a letter dated  
3 December 22, 2021, BART denied the request for a religious accommodation. A true  
4 and correct copy of the denial letter, along with the combined denials of the other  
5 Plaintiffs, accompanies this Complaint, is incorporated in full, and is marked as  
6 Exhibit 2. CHAVEZ declined to be vaccinated and was thus fired. CHAVEZ has  
7 exhausted administrative remedies and has received a notice of right to sue from the  
8 Equal Employment Opportunity Commission (EEOC). A true and correct copy of  
9 the EEOC notice, along with those of the other Plaintiffs, accompanies this  
10 Complaint, is incorporated in full, and is marked as Exhibit 3. CHAVEZ sues on  
11 behalf of himself and on behalf of others similarly situated. CHAVEZ is the Plaintiff  
12 Class representative.

13 5. Plaintiff, MARY ENGLER-CONTRERAS, was employed by BART as a  
14 Senior Operations Supervisor Liaison. ENGLER-CONTRERAS has sincerely held  
15 religious beliefs that prevent her from receiving the COVID-19 vaccine without  
16 violating her faith. ENGLER-CONTRERAS submitted a written request for a  
17 religious accommodation under Title VII and FEHA. ENGLER-CONTRERAS  
18 utilized BART'S form entitled *Employee Request for Religious Exemption (COVID-19*  
19 *Vaccination)*. A true and correct copy of her request, along with the combined requests  
20 of the other Plaintiffs, accompanies this Complaint, is incorporated in full, and is  
21 marked as Exhibit 1. Her beliefs are sincerely held. BART granted the exemption,  
22 but in a letter dated January 5, 2022, BART denied the request for a religious  
23 accommodation. A true and correct copy of the denial letter, along with the  
24 combined denials of the other Plaintiffs, accompanies this Complaint, is incorporated  
25 in full, and is marked as Exhibit 2. ENGLER-CONTRERAS declined to be  
26 vaccinated and was thus fired. ENGLER-CONTRERAS has exhausted  
27 administrative remedies and has received a notice of right to sue from the EEOC. A  
28

1 true and correct copy of the EEOC notice, along with those of the other Plaintiffs,  
2 accompanies this Complaint, is incorporated in full, and is marked as Exhibit 3.  
3 ENGLER-CONTRERAS sues on behalf of herself and on behalf of others similarly  
4 situated. She is the first alternate Plaintiff Class representative.

5 6. Plaintiff, RHIANNON DOYLE, was employed by BART as an  
6 Administrative CSO. DOYLE has sincerely held religious beliefs that prevent her  
7 from receiving the COVID-19 vaccine without violating her faith. DOYLE  
8 submitted a written request for a religious accommodation under Title VII and  
9 FEHA. DOYLE utilized BART'S form entitled *Employee Request for Religious Exemption*  
10 *(COVID-19 Vaccination)*. A true and correct copy of her request, along with the  
11 combined requests of the other Plaintiffs, accompanies this Complaint, is  
12 incorporated in full, and is marked as Exhibit 1. Her beliefs are sincerely held. BART  
13 granted the exemption, but in a letter dated December 22, 2021, BART denied the  
14 request for a religious accommodation. A true and correct copy of the denial letter,  
15 along with the combined denials of the other Plaintiffs, accompanies this Complaint,  
16 is incorporated in full, and is marked as Exhibit 2. DOYLE declined to be vaccinated  
17 and was thus fired. DOYLE has exhausted administrative remedies and has received  
18 a notice of right to sue from the EEOC. A true and correct copy of the EEOC  
19 notice, along with those of the other Plaintiffs, accompanies this Complaint, is  
20 incorporated in full, and is marked as Exhibit 3. DOYLE sues on behalf of herself  
21 and on behalf of others similarly situated. She is the second alternate Plaintiff Class  
22 representative.

23 7. Plaintiff, SUSAN RICHARDSON, was employed by BART as a Full  
24 Time Station Agent. RICHARDSON has sincerely held religious beliefs that prevent  
25 her from receiving the COVID-19 vaccine without violating her faith.  
26 RICHARDSON submitted a written request for a religious accommodation under  
27 Title VII and FEHA. RICHARDSON utilized BART'S form entitled *Employee Request*

1 *for Religious Exemption (COVID-19 Vaccination)*. A true and correct copy of her request,  
2 along with the combined requests of the other Plaintiffs, accompanies this Complaint,  
3 is incorporated in full, and is marked as Exhibit 1. Her beliefs are sincerely held.  
4 BART granted the exemption, but in a letter dated December 20, 2021, BART denied  
5 the request for a religious accommodation. A true and correct copy of the denial  
6 letter, along with the combined denials of the other Plaintiffs, accompanies this  
7 Complaint, is incorporated in full, and is marked as Exhibit 2. RICHARDSON  
8 declined to be vaccinated and was thus fired. RICHARDSON has exhausted  
9 administrative remedies and has received a notice of right to sue from the EEOC. A  
10 true and correct copy of the EEOC notice, along with those of the other Plaintiffs,  
11 accompanies this Complaint, is incorporated in full, and is marked as Exhibit 3.  
12 RICHARDSON sues on behalf of herself and on behalf of others similarly situated.  
13 She is the third alternate Plaintiff Class representative.

14 8. Plaintiff, JONATHAN CASTANEDA, was employed by BART as an  
15 AFC Electronics Technician. CASTANEDA, has sincerely held religious beliefs that  
16 prevent him from receiving the COVID-19 vaccine without violating his faith.  
17 CASTANEDA, submitted a written request for a religious accommodation under  
18 Title VII and FEHA. CASTANEDA, utilized BART'S form entitled *Employee Request*  
19 *for Religious Exemption (COVID-19 Vaccination)*. A true and correct copy of his request,  
20 along with the combined requests of the other Plaintiffs, accompanies this Complaint,  
21 is incorporated in full, and is marked as Exhibit 1. His beliefs are sincerely held.  
22 BART granted the exemption, but in a letter dated December 22, 2021, BART denied  
23 the request for a religious accommodation. A true and correct copy of the denial  
24 letter, along with the combined denials of the other Plaintiffs, accompanies this  
25 Complaint, is incorporated in full, and is marked as Exhibit 2. CASTANEDA  
26 declined to be vaccinated and was forced to resign. CASTANEDA, has exhausted  
27 administrative remedies and has received a notice of right to sue from the EEOC. A  
28

1 true and correct copy of the EEOC notice, along with those of the other Plaintiffs,  
2 accompanies this Complaint, is incorporated in full, and is marked as Exhibit 3.  
3 CASTANEDA, sues on behalf of himself and on behalf of others similarly situated.  
4 He is the fourth alternate Plaintiff Class representative.

5 9. Plaintiff, JAMES GILHEANY, was employed by BART as a Manager of  
6 Technology Programs. GILHEANY has sincerely held religious beliefs that prevent  
7 him from receiving the COVID-19 vaccine without violating his faith. GILHEANY  
8 submitted a written request for a religious accommodation under Title VII and the  
9 California Fair Employment and Housing Act (FEHA). GILHEANY utilized  
10 BART'S form entitled *Employee Request for Religious Exemption (COVID-19 Vaccination)*.  
11 A true and correct copy of his request, along with the combined requests of the other  
12 Plaintiffs, accompanies this Complaint, is incorporated in full, and is marked as  
13 Exhibit 1. His beliefs are sincerely held. BART granted the exemption, but in a letter  
14 dated January 18, 2022, BART denied the request for a religious accommodation. A  
15 true and correct copy of the denial letter, along with the combined denials of the  
16 other Plaintiffs, accompanies this Complaint, is incorporated in full, and is marked as  
17 Exhibit 2. GILHEANY declined to be vaccinated and was thus fired. GILHEANY  
18 has exhausted administrative remedies and has received a notice of right to sue from  
19 the Equal Employment Opportunity Commission (EEOC). A true and correct copy  
20 of the EEOC notice, along with those of the other Plaintiffs, accompanies this  
21 Complaint, is incorporated in full, and is marked as Exhibit 3. GILHEANY sues on  
22 behalf of himself and on behalf of others similarly situated. GILHEANY is the fifth  
23 alternate Plaintiff Class representative.

24 10. Plaintiff, PHI LE, was employed by BART as a Community Service  
25 Officer. LE has sincerely held religious beliefs that prevent him from receiving the  
26 COVID-19 vaccine without violating his faith. LE submitted a written request for a  
27 religious accommodation under Title VII and the California Fair Employment and  
28



1 Housing Act (FEHA). LE utilized BART'S form entitled *Employee Request for Religious*  
2 *Exemption (COVID-19 Vaccination)*. A true and correct copy of his request, along with  
3 the combined requests of the other Plaintiffs, accompanies this Complaint, is  
4 incorporated in full, and is marked as Exhibit 1. His beliefs are sincerely held. BART  
5 granted the exemption, but in a letter dated December 22, 2021, BART denied the  
6 request for a religious accommodation. A true and correct copy of the denial letter,  
7 along with the combined denials of the other Plaintiffs, accompanies this Complaint,  
8 is incorporated in full, and is marked as Exhibit 2. LE declined to be vaccinated and  
9 was thus fired. LE has exhausted administrative remedies and has received a notice of  
10 right to sue from the Equal Employment Opportunity Commission (EEOC). A true  
11 and correct copy of the EEOC notice, along with those of the other Plaintiffs,  
12 accompanies this Complaint, is incorporated in full, and is marked as Exhibit 3. LE  
13 sues on behalf of himself and on behalf of others similarly situated. LE is the sixth  
14 alternate Plaintiff Class representative.

15 11. Plaintiff, GEMA ESPINOZA-CARR, was employed by BART as a  
16 Station Agent. ESPINOZA-CARR has sincerely held religious beliefs that prevent  
17 her from receiving the COVID-19 vaccine without violating her faith. ESPINOZA-  
18 CARR submitted a written request for a religious accommodation under Title VII and  
19 FEHA. ESPINOZA-CARR utilized BART'S form entitled *Employee Request for*  
20 *Religious Exemption (COVID-19 Vaccination)*. A true and correct copy of her request,  
21 along with the combined requests of the other Plaintiffs, accompanies this Complaint,  
22 is incorporated in full, and is marked as Exhibit 1. Her beliefs are sincerely held.  
23 BART granted the exemption, but in a letter dated December 8, 2021, BART denied  
24 the request for a religious accommodation. A true and correct copy of the denial  
25 letter, along with the combined denials of the other Plaintiffs, accompanies this  
26 Complaint, is incorporated in full, and is marked as Exhibit 2. ESPINOZA-CARR  
27 declined to be vaccinated and was thus fired. ESPINOZA-CARR has exhausted  
28

1 administrative remedies and has received a notice of right to sue from the EEOC. A  
 2 true and correct copy of the EEOC notice, along with those of the other Plaintiffs,  
 3 accompanies this Complaint, is incorporated in full, and is marked as Exhibit 3.  
 4 ESPINOZA-CARR sues on behalf of herself and on behalf of others similarly  
 5 situated. She is the seventh alternate Plaintiff Class representative.

6 12. Plaintiff, AVIN CURRY, was employed by BART as a Police Officer.  
 7 CURRY has sincerely held religious beliefs that prevent him from receiving the  
 8 COVID-19 vaccine without violating his faith. CURRY submitted a written request  
 9 for a religious accommodation under Title VII and FEHA. CURRY utilized BART'S  
 10 form entitled *Employee Request for Religious Exemption (COVID-19 Vaccination)*. A true  
 11 and correct copy of his request, along with the combined requests of the other  
 12 Plaintiffs, accompanies this Complaint, is incorporated in full, and is marked as  
 13 Exhibit 1. His beliefs are sincerely held. BART granted the exemption, but in a letter  
 14 dated January 27, 2022, BART denied the request for a religious accommodation. A  
 15 true and correct copy of the denial letter, along with the combined denials of the  
 16 other Plaintiffs, accompanies this Complaint, is incorporated in full, and is marked as  
 17 Exhibit 2. CURRY declined to be vaccinated and was forced into early retirement a  
 18 day before being fired. ESPINOZA-CARR has exhausted administrative remedies  
 19 and has received a notice of right to sue from the EEOC. A true and correct copy of  
 20 the EEOC notice, along with those of the other Plaintiffs, accompanies this  
 21 Complaint, is incorporated in full, and is marked as Exhibit 3. CURRY sues on behalf  
 22 of himself and on behalf of others similarly situated. He is the eighth alternate  
 23 Plaintiff Class representative.

## 24 25 Defendants

26 13. Defendant, SAN FRANCISCO BAY AREA RAPID TRANSIT  
 27 DISTRICT, was established as a special district in 1957 and is a heavy-rail public  
 28



transit system that connects the San Francisco Peninsula with communities in the East Bay and South Bay. BART began service in 1972.

14. The true names and capacities, whether individual, corporate, associate, or otherwise, of DOES 1-100, inclusive, are unknown to Plaintiffs at this time, who therefore sues said Defendants by such fictitious names. Plaintiffs are informed and believe and thereon allege that each of the fictitiously named Defendants is in some way responsible for, or participated in or contributed to, the matters and things complained of herein, and is legally responsible in some manner. Plaintiffs will seek leave to amend this Complaint when the true names, capacities, and responsibilities have been ascertained.

### **CLASS ACTION ALLEGATIONS**

15. Plaintiffs, GABRIEL CHAVEZ, MARY ENGLER-CONTRERAS, RHIANNON DOYLE, SUSAN RICHARDSON, JONATHAN CASTANEDA, JAMES GILHEANY, PHI LE, GEMA ESPINOZA-CARR and AVIN CURRY (each a Plaintiff and, together, the named Plaintiffs), bring this action for a class of persons defined as follows: All employees presently or previously employed by BART (1) who have been ordered to submit to a COVID-19 vaccination, (2) who have submitted a written request for a religious exemption, and (3) who were not granted a religious accommodation.

16. These persons are collectively referred to as the Plaintiff Class.

17. The proposed Plaintiff Class satisfies the numerosity, commonality, typicality, and adequacy prerequisites for suing as a representative party under FRCP 23:

A. **Numerosity:** The proposed Plaintiff Class is comprised of approximately 179 current or former employees of BART.

1           B. **Commonality:** There are questions of law and fact common to each  
 2           member of the proposed Plaintiff Class, to wit:

- 3           (1) Whether the universal denial of accommodations to those  
 4           submitting requests for a religious exemption to vaccination  
 5           against COVID-19 was lawful under federal and state  
 6           employment laws when the employer simultaneously allowed  
 7           *secular* accommodations for the unvaccinated;  
 8           (2) Whether BART's standardized process of inquiring into the  
 9           sincerity of the faith of any employee who requests religious  
 10          accommodation is consistent with federal employment laws,  
 11          including Title VII of the Civil Rights Act of 1964, 42 U.S.C. §  
 12          2000e, et seq. (Title VII), and state employment laws, including  
 13          the California Fair Employment and Housing Act, Cal. Gov.  
 14          Code § 12900, et seq. (FEHA); and  
 15          (3) Whether BART's standardized process of inquiring into the  
 16          sincerity of the faith of any employee who requests religious  
 17          accommodation is consistent with the religion clauses enumerated  
 18          in the First Amendment.

19          C. **Typicality:** The named Plaintiffs' claims are typical of the Plaintiff  
 20          Class in that (1) all named Plaintiffs hold religious beliefs that compel  
 21          them not to receive the COVID-19 vaccine; (2) they have claimed  
 22          sincerity of their religious beliefs; (3) they have submitted written  
 23          requests for religious accommodation; and (4) their requests have been  
 24          denied.

25          D. **Adequacy of Representation:** The named Plaintiffs will fairly and  
 26          adequately protect the interests of the proposed Plaintiff Class. The  
 27          interests of the named Plaintiffs do not conflict with the interests of  
 28

the Plaintiff Class members, and the named Plaintiffs have retained counsel experienced in successful class action litigation and constitutional litigation in order to vigorously prosecute this action on behalf of the Plaintiff Class. The relief sought by the named Plaintiffs will inure to the benefit of the Plaintiff Class generally.

E. The named Plaintiffs raise predominantly common factual and legal questions that can be answered for all Plaintiff Class members through a single class-wide proceeding, which will be a superior method for adjudicating these issues for the Plaintiff Class.

### **FACTS**

18. On October 14, 2021, BART issued a COVID-19 Vaccination Policy requiring all employees to be fully vaccinated as a condition of employment.

19. Per the requirements of state and federal anti-discrimination in employment laws, BART employees were given an opportunity to request either a medical or religious exemption to COVID-19 vaccination. If an exemption was granted, then BART determined whether to provide a reasonable accommodation.

20. Between October 14, 2021, and February 16, 2022, 204 BART employees requested either religious or medical exemptions to COVID-19 vaccination. A true and correct copy of the table showing the number of employees seeking exemptions and the results of said requests accompanies this Complaint, is incorporated in full, and is marked as Exhibit 4.

21. Of those, 25 employees requested medical exemptions to COVID-19 vaccination. None or 1 in 3—employees requesting a medical exemption were given an accommodation by BART. *See* Exhibit 4.

22. Approximately 179 employees submitted requests to be exempted from COVID-19 vaccination due to their sincerely held religious beliefs. Seventy of these

1 employees were granted a religious **exemption**. However, 109 employees' requests for  
 2 religious exemption were denied. *Id.*

3 23. Of the 70 remaining employees granted a religious exemption, not one  
 4 employee with faith-based convictions against COVID-19 vaccination was given a  
 5 religious **accommodation**. No matter what any religious employee suggested as an  
 6 accommodation, it was never good enough.

7 24. The named Plaintiffs and the individual members of the Plaintiff Class  
 8 have each submitted a written request for a religious accommodation in order to be  
 9 exempted from COVID-19 vaccination. Like the rest of the Plaintiff Class, they  
 10 affirmatively assert that their religious convictions against taking the COVID-19  
 11 vaccination are sincerely held.

12 25. Generally, an employer should proceed on the assumption that a request  
 13 for religious accommodation is based on sincerely held religious beliefs, practices, or  
 14 observances. BART has turned this standard on its head. Instead, BART instituted a  
 15 detailed probe into the sincerity of the faith of its employees in which 61 percent  
 16 received a failing grade.

17 26. BART utilized an interviewer question template entitled *Religious*  
 18 *Exemption Interviews (Question Template)*. A true and correct copy of the *Question Template*  
 19 accompanies this Complaint and is incorporated in full and marked as Exhibit 5.

20 27. The *Question Template* began with four boxes for the interviewer which  
 21 appeared as follows:

22 EEOC factors:

- 23 ☐ The reasons cited in support of the request were primarily for  
 secular/non-religious reasons.
- 24 ☐ A clear nexus between the request and the stated religious  
 25 beliefs was not established.
- 26 ☐ Evidence of behaviors inconsistent with adherence to the  
 27 stated beliefs exists.

1           □ The timing of your request as it relates to adoption of the  
2           stated beliefs. *Id.*

3           28.    The interviewer then asks the employee five questions:

- 4           1. Can you just tell us briefly about your sincerely held belief?  
5           2. Can you tell us in your own words why taking COVID-19  
6           vaccine is contrary to your religious belief?  
7           3. What do you think will happen to you if you take the COVID-  
8           19 vaccine?  
9           4. Can you provide us other examples of how this religious belief  
10          is demonstrated in other aspects of your life?  
11          5. You refuse to take the COVID-19 vaccine because of the  
12          alleged use of aborted fetal cells in the creation of the vaccine.  
13          Research on this topic has revealed some cosmetic and over-  
14          the-counter medicines may use the same process as the  
15          COVID-19 vaccine. Are you aware of this? Tell me how else  
16          you demonstrate the same pre-cautions in your life. *Id.*

17          29.    The third question, which asks, “What do you think will happen to you if  
18          you take the COVID-19 vaccine,” is, charitably, ambiguous at best and possibly  
19          calculated to mislead the employee. Does this interrogatory seek to elicit an answer  
20          based in doctrine or theology? By way of examples, “I will have a guilty conscience.”  
21          “I will be committing a sin.” “I will deny my faith.” “I will spend eternity in hell.”  
22          On the other hand, is the question seeking a social, emotional, or physical response?  
23          Consider these examples. “My wife will divorce me as a coward without principle.”  
24          “I’ll lose my bodily autonomy.” “I’ll get sick or die.” The employee has little or no  
25          idea which direction will lead to a denial or approval.

26          30.    The protocol and standardized forms used by HR evaluators comprise a  
27          detailed, individualized assessment, giving broad discretion to an evaluator.

28          31.    The evaluators use a document entitled RELIGIOUS REQUEST  
REVIEW FORM (COVID-19 Vaccination). A true and correct copy of the  
RELIGIOUS REQUEST REVIEW FORM (COVID-19 Vaccination) accompanies  
this Complaint and is incorporated in full and marked as Exhibit 6. The form has

1 evaluators engage in an individualized assessment in which they ask the following  
2 questions:

- 3
- 4 • “Is there evidence that the employee has acted in a way that is inconsistent with  
the claimed belief.”
- 5 • “Is there evidence the employee is seeking a benefit or an exception that is  
6 likely to be sought for nonreligious reasons?”
- 7 • “Is the timing of the request considered questionable?”
- 8 • “Is there evidence the employee may be seeking the benefit for secular  
reasons?”

9

10 32. After denying every request for an accommodation coming from a  
11 religious objector to the vaccination, BART gave these employees an ultimatum:

- 12 • Comply with the vaccination mandate;
- 13 • Retire if qualified;
- 14 • Resign;
- 15 • Do nothing and be terminated. *See* Exhibit 2.

16 33. The ultimatum required the Plaintiff Class to choose between their  
17 employment and their faith. Unless an employee was vaccinated, the employee was  
18 either forced into early retirement, constructively discharged by forced resignation, or  
19 simply terminated.

*Centers for Disease Control Statements*

20

21 34. In a published statement, the federal Centers for Disease Control and  
22 Prevention (CDC) stated that the Delta variant resulted in similarly high COVID-19  
23 viral loads in vaccinated and unvaccinated people.<sup>1</sup> CDC Director Rochelle Walensky  
24 has confirmed that COVID-19-positive individuals carry the same “viral load”

25

26 \_\_\_\_\_

27 <sup>1</sup> Statement from CDC Director Rochelle P. Walensky issued on July 30, 2021,  
28 <https://www.cdc.gov/media/releases/2021/s0730-mmwr-covid-19.html>.



1 (equivalent to the risk of spreading infection) whether they are vaccinated or  
 2 unvaccinated.<sup>2</sup>

3 35. The CDC Director's statement was based on a study in the summer of  
 4 2021 which tested vaccinated and unvaccinated persons and found that "[c]ycle  
 5 threshold values [COVID-19 viral loads] were similar among specimens from patients  
 6 who were fully vaccinated and those who were not."<sup>3</sup>

7 36. Later studies have found that the viral load associated with COVID-19  
 8 variants such as Omicron also does not vary based upon vaccination status: "[F]ully  
 9 vaccinated individuals with breakthrough infections have peak viral load similar to  
 10 unvaccinated cases and can efficiently transmit infection in household settings,  
 11 including to fully vaccinated contacts."<sup>4</sup>

12 37. In another official statement, the CDC has confirmed those studies and  
 13 stated that it expects that anyone with an Omicron infection, regardless of vaccination  
 14 status or whether or not they have symptoms, can spread the virus to others.<sup>5</sup>

15 38. Because the viral loads are no different for the vaccinated and the  
 16 unvaccinated, BART's position that the unvaccinated pose a danger to themselves,  
 17 coworkers, and the public, but that the vaccinated do not pose this danger, is not  
 18 consistent with the above-cited statements from the CDC.

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19  
 20 <sup>2</sup> *Id.*

21 <sup>3</sup> "Outbreak of SARS-CoV-2 Infections, Including COVID-19 Vaccine  
 22 Breakthrough Infections, Associated with Large Public Gatherings — Barnstable  
 23 County, Massachusetts, July 2021," *Morbidity and Mortality Weekly Report*, CDC (July  
 24 30, 2021),  
[https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm?s\\_cid=mm7031e2\\_w](https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm?s_cid=mm7031e2_w).

25 <sup>4</sup> David W. Eyre, B.M., B.Ch., D.Phil. et al., *Effect of Covid-19 Vaccination on*  
 26 *Transmission of Alpha and Delta Variants*, *New England J. Med* 386:744-756 (February  
 27 24, 2022), <https://www.nejm.org/doi/full/10.1056/NEJMoa2116597>.

<sup>5</sup> "Omicron Variant: What You Need to Know," *CDC* (March 29, 2022),  
<https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html>.

39. The CDC spokesperson, Greta Massetti, stated that immunity for the population is now around 95 percent when combining those who have contracted and recovered from COVID-19 with those that have been vaccinated. As such, “it makes the most sense not to differentiate” between the vaccinated and unvaccinated.<sup>6</sup>

### **FIRST CAUSE OF ACTION**

#### **FAILURE TO PROVIDE RELIGIOUS ACCOMMODATION**

#### **Violation of Title VII of the Civil Rights Act of 1964**

All Plaintiffs Against All Government Defendants  
(42 U.S.C. § 2000e)

40. Plaintiffs repeat and reallege the allegations above and incorporate those allegations herein by reference.

41. At all times relevant hereto, Title VII was in full force and effect and was binding on BART.

42. At all times relevant hereto, the Plaintiffs were performing competently in the positions they held as employees of BART.

43. Plaintiffs have bona fide religious beliefs that conflict with receiving the COVID-19 vaccination; they have informed their employer of such beliefs. The Plaintiffs were disciplined for failure to comply with the conflicting employment requirement.

44. Title VII makes it an unlawful employment practice to fail or refuse to reasonably accommodate the religious beliefs and practices of an employee.

45. BART failed to provide reasonable alternative means of accommodating the religious belief or observance that was in conflict with the COVID-19 vaccination work requirement.

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<sup>6</sup> “With new guidance, CDC ends test-to-stay for schools and relaxes COVID rules” NPR (Aug. 11, 2022), <https://www.npr.org/sections/health-shots/2022/08/11/1116991600/with-new-guidance-cdc-ends-test-to-stay-for-schools-and-relaxes-covid-rules>.

1           46.     BART granted medical accommodations to vaccination but not a single  
2 religious accommodation. Stated otherwise, religious persons as a class were excluded  
3 from accommodation.

4           47.     An unvaccinated employee exempted for medical reasons poses precisely  
5 the same threat as an unvaccinated employee exempted for religious reasons.

6           48.     There is a dispute between the Plaintiffs and Defendant. BART asserts  
7 that it can undertake a detailed probe of the sincerity of the religious beliefs of its  
8 employees; this includes placing a burden on the Plaintiff Class to provide an objective  
9 basis for religious convictions regarding the refusal to take the COVID-19 vaccination.  
10 Plaintiffs disagree. Because faith is intrinsically subjective, a religious objector cannot  
11 be held to an objective measure of proof regarding what lay within his or her heart,  
12 mind, and soul. Belief in what one may demonstrate to the senses is not faith.  
13 Plaintiffs assert that Title VII presumes sincerity of belief by an employee, and  
14 therefore BART's standardized practice of a rigorous inquisition is an unlawful  
15 standard. The Plaintiffs' legal position is that, although an employee's faith may be  
16 deemed as heresy to some and incomprehensible to others, employers cannot require  
17 orthodoxy of employees according to a recognized religion or demand that employees  
18 be put to the proof of their religious beliefs.

## 19                                   **SECOND CAUSE OF ACTION**

### 20                                   **RELIGION CLAUSES**

#### 21                                   **First Amendment to the U.S. Constitution**

22                                   All Plaintiffs Against All Government Defendants

23                                   (42 U.S.C. § 1983)

24           49.     The Plaintiffs repeat and reallege the allegations above and incorporate  
25 those allegations herein by reference.

26           50.     The right to free exercise of religion is a right protected and guaranteed  
27 by the First Amendment of the U.S. Constitution. The liberties under the First  
28

1 Amendment apply to the states and their political subdivisions through the Fourteenth  
2 Amendment.

3 51. The actions of BART have been, and continue to be, done under color of  
4 law.

5 52. The Plaintiffs have sincerely held religious beliefs that compel them to  
6 refuse the COVID-19 vaccine.

7 53. There are two ways that BART has violated the religious clauses. These  
8 are through the evaluation process which looks for heretics or hypocrites. The second  
9 is by totally excluding religious people from a statutory accommodation to a condition  
10 required for employment.

11 *Total Exclusion of Religious Employees*

12 54. BART provided accommodations for approximately 33 percent of its  
13 employees who sought an exemption to vaccination due to medical reasons. In  
14 contrast, BART provided accommodations for 0 percent of its employees who sought  
15 an exemption to vaccination due to religious beliefs.

16 55. The exclusion of employees from a statutory accommodation deprives  
17 them of a right because of their status as people of faith.

18 56. One third of employees requesting a medical exemption from vaccination  
19 received an accommodation, though such an unvaccinated employee poses the same  
20 health risk as an unvaccinated religious employee.

21 *Heretics and Hypocrites*

22 57. The protocol that BART evaluators use imposes requirements that stand  
23 as hostile to the religious beliefs of the Plaintiff Class and acts in a manner that passes  
24 judgment upon, or presupposes the illegitimacy of, religious beliefs and practices.  
25 Therefore, the protocol used is not neutral.

26 58. BART's detailed probe into the beliefs of the Plaintiff Class exceeds  
27 sincerity by determining orthodoxy, verity of beliefs, and hypocrisy.

1           59. BART's evaluators are taking on the role that the First Amendment  
2 reserves to ecclesiastical courts, not government officials.

3           60. There is a dispute between the Plaintiffs and Defendant. BART asserts  
4 that it can undertake a detailed probe of the sincerity of the religious beliefs of its  
5 employees; this includes placing a burden on the Plaintiff Class to provide an objective  
6 basis for religious convictions regarding the refusal to take the COVID-19 vaccination.  
7 Plaintiffs disagree. Because faith is intrinsically subjective, a religious objector cannot  
8 be held to an objective measure of proof regarding what lay within his or her heart,  
9 mind, and soul. Belief in what one may demonstrate to the senses is not faith. The  
10 Plaintiffs' legal position is that, although an employee's faith may be deemed as heresy  
11 to some and incomprehensible to others, employers cannot require orthodoxy of  
12 employees according to a recognized religion or demand that employees be put to the  
13 proof of their religious beliefs.

14           61. BART provided accommodations for approximately 33 percent of its  
15 employees who sought an exemption to vaccination due to medical reasons. In  
16 contrast, BART provided accommodations for 0 percent of its employees who sought  
17 an exemption to vaccination due to religious beliefs.

18           62. The protocol that evaluators of employees seeking a religious exemption  
19 constitutes individualized assessments, giving broad discretion to an evaluator, and  
20 thus are not neutral and generally applicable.

21           63. The vaccination requirement forces the Plaintiff Class to choose between  
22 receiving the COVID-19 vaccine in violation of their sincerely held religious beliefs or  
23 being fired, forced into retirement, or constructively discharged by pressuring them to  
24 resign.

25           64. The conduct of BART thus imposes a substantial burden on the Plaintiffs  
26 and the Plaintiff Class and interferes with, and deprives them of, the enjoyment of the  
27

1 religious liberties guaranteed by the First Amendment to the U.S. Constitution, as  
2 made applicable to the states through the Fourteenth Amendment.

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO PROVIDE RELIGIOUS ACCOMMODATION**  
5 **Violation of the California Fair Employment and Housing Act**  
6 All Plaintiffs Against All Government Defendants  
(Gov. Code § 12900 et seq.)

7 65. The Plaintiffs repeat and reallege the allegations above and incorporate  
8 those allegations herein by reference.

9 66. At all times relevant hereto, FEHA was in full force and effect and was  
10 binding on BART.

11 67. BART failed to provide reasonable alternative means of accommodating  
12 the religious belief or observance that conflicted with the work requirement, i.e.,  
13 COVID-19 vaccination.

14 68. Accommodating the Plaintiffs does not pose a *significant difficulty or expense*  
15 on BART per Gov. Code § 12926(u).

16 69. Plaintiffs are entitled to further relief as more fully set forth below in their  
17 Prayer for Relief.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs request that the Court enter judgment in their favor, and  
20 against the Defendant, for full relief, including the following:

21 a. Declaratory judgment that BART's protocol for determining sincerity of  
22 faith in whole, or in part, on its face, and as applied, does not comport with the  
23 requirements of Title VII;

24 b. Declaratory judgment that BART's protocol for determining sincerity of  
25 faith in whole, or in part, on its face, and as applied, does not comport with the  
26 requirements of FEHA;



1 c. Declaratory judgment that BART's protocol for determining sincerity of  
2 faith is in whole, or in part, on its face, and as applied, is violative of the religion  
3 clauses of the First Amendment;

4 d. Declaratory judgment that BART's protocol individualized assessment  
5 for both religious exemptions and accommodation is in whole, or in part, on its face,  
6 and as applied, violative of the religion clauses of the First Amendment;

7 e. Declaratory judgment that BART's decision not to grant any religious  
8 accommodations is violative of the religion clauses of the First Amendment;

9 f. Declaratory judgment that providing a religious accommodation does not  
10 impose an undue hardship on BART under Title VII;

11 g. Declaratory judgment that providing a religious accommodation does not  
12 impose a significant difficulty or expense on BART under FEHA;

13 h. A preliminary and permanent injunction prohibiting BART's protocol for  
14 determining sincerity of faith;

15 i. Equitable relief in the form of an order setting aside the denials for  
16 accommodation and that the Plaintiff Class receive *de novo* consideration of their  
17 accommodation requests;

18 j. An award for actual, consequential, and incidental financial losses,  
19 including, but not limited to lost back pay, front pay, benefits, lost overtime, and other  
20 compensation plus interest;

21 k. An award of compensatory damages;

22 l. Restoration of employee benefits, including, but not limited to, medical  
23 benefits, pensions, and insurance;

24 m. Restore vacation days, comp hours, and lost time hours;

25 n. Attorneys' fees and costs; and

26 o. Any and all other appropriate relief to which the Plaintiffs may be entitled  
27 including all "appropriate relief" within the scope of FRCP 54(c).

1 Dated: October 17, 2022

2 /s/ Kevin T. Snider

3 Kevin T. Snider

4 *Counsel of Record*

5 Matthew B. McReynolds

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17 **DEMAND FOR JURY TRIAL**

18 Plaintiffs demand a jury trial on all causes of action and claims to which  
19 they have a right to a jury trial.

20 /s/ Kevin T. Snider

21 Kevin T. Snider

22 *Counsel of Record*

23 Matthew B. McReynolds

24 Milton E. Matchak

25 *Attorneys for Plaintiffs*